

AMENDED IN ASSEMBLY JANUARY 29, 2004

AMENDED IN SENATE APRIL 3, 2003

SENATE BILL

No. 31

Introduced by Senator Figueroa

(Coauthors: Senators Chesbro, Machado, Ortiz, Romero, and Soto)

(Coauthors: Assembly Members Chavez, Jackson, Pavley, and Yee)

December 2, 2002

An act to amend ~~Sections 7195 and~~ *Section* 7197 of, and to add Sections ~~7195.5~~, 7196.2, 7197.5, and 7198.5 to, the Business and Professions Code, relating to home inspections.

LEGISLATIVE COUNSEL'S DIGEST

SB 31, as amended, Figueroa. Home inspectors.

Existing law regulates a person who performs home inspections for a fee. Existing law requires a home inspector to conduct a home inspection with the degree of care that a reasonably prudent home inspector would recognize. Under existing law, certain activities are listed as unfair business practices for a home inspector.

This bill would require ~~a certified home inspector to conduct a home inspection with the degree of care that a reasonably prudent certified home inspector would recognize. The bill would prohibit a person from holding himself or herself out as or using the title "certified home inspector" or other words implying he or she is a certified home inspector without fulfilling certain requirements. The bill would define a home inspection professional association and specify its duties in certifying home inspectors. The bill would require, on or after July 1, 2004,~~ a home inspector to make disclosures in writing *to the person on*

whose behalf the inspection is being done as to his or her qualifications, and whether the home inspector carries general and professional liability insurance, and whether the home inspector is certified prior to commencing a home inspection. The bill would provide that the provisions regulating home inspectors do not prohibit a licensed contractor from performing a home inspection. The bill would also add items to the list of unfair business practices for a home inspector and would exempt certain activities from that list. The bill would require any person representing himself or herself as a home inspector to refrain from offering any opinions or making any recommendations regarding the need for structural pest control work in connection with a particular structure.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. Section 7195 of the Business and Professions~~
- 2 ~~Code is amended to read:~~
- 3 ~~7195. For purposes of this chapter, the following definitions~~
- 4 ~~apply:~~
- 5 ~~(a) (1) “Home inspection” is a noninvasive, physical~~
- 6 ~~examination, performed for a fee in connection with a transfer, as~~
- 7 ~~defined in subdivision (e), of real property, of the mechanical,~~
- 8 ~~electrical, or plumbing systems or the structural and essential~~
- 9 ~~components of a residential dwelling of one to four units designed~~
- 10 ~~to identify material defects in those systems, structures and~~
- 11 ~~components. “Home inspection” includes any consultation~~
- 12 ~~regarding the property that is represented to be a home inspection~~
- 13 ~~or any confusingly similar term.~~
- 14 ~~(2) “Home inspection,” if requested by the client, may include~~
- 15 ~~an inspection of energy efficiency. Energy efficiency items to be~~
- 16 ~~inspected may include the following:~~
- 17 ~~(A) A noninvasive inspection of insulation R-values in attics,~~
- 18 ~~roofs, walls, floors, and ducts.~~
- 19 ~~(B) The number of window glass panes and frame types.~~
- 20 ~~(C) The heating and cooling equipment and water heating~~
- 21 ~~systems.~~
- 22 ~~(D) The age and fuel type of major appliances.~~
- 23 ~~(E) The exhaust and cooling fans.~~

1 ~~(F) The type of thermostat and other systems.~~

2 ~~(G) The general integrity and potential leakage areas of walls,~~
3 ~~window areas, doors, and duct systems.~~

4 ~~(H) The solar control efficiency of existing windows.~~

5 ~~(b) A “material defect” is a condition that significantly affects~~
6 ~~the value, desirability, habitability, or safety of the dwelling. Style~~
7 ~~or aesthetics shall not be considered in determining whether a~~
8 ~~system, structure, or component is defective.~~

9 ~~(c) A “home inspection report” is a written report prepared for~~
10 ~~a fee and issued after a home inspection. The report clearly~~
11 ~~describes and identifies the inspected systems, structures, or~~
12 ~~components of the dwelling, any material defects identified, and~~
13 ~~any recommendations regarding the conditions observed or~~
14 ~~recommendations for evaluation by appropriate persons.~~

15 ~~(d) A “home inspector” is any individual who performs a~~
16 ~~home inspection.~~

17 ~~(e) “Transfer” is a transfer by sale, exchange, installment land~~
18 ~~sales contract, as defined in Section 2985 of the Civil Code, lease~~
19 ~~with an option to purchase, any other option to purchase, or ground~~
20 ~~lease coupled with improvements, of real property or residential~~
21 ~~stock cooperative, improved with or consisting of not less than one~~
22 ~~nor more than four dwelling units.~~

23 ~~(f) A “certified home inspector” means a person who meets~~
24 ~~both of the following requirements:~~

25 ~~(1) Has demonstrated to a home inspection professional~~
26 ~~association that he or she has fulfilled one of the following:~~

27 ~~(A) Performed at least 200 home inspections for which a fee~~
28 ~~was paid.~~

29 ~~(B) Performed at least 100 home inspections for which a fee~~
30 ~~was paid and completed at least 45 classroom hours of relevant~~
31 ~~home inspection education provided by a school approved by the~~
32 ~~Bureau for Private Postsecondary and Vocational Education, a~~
33 ~~governmental agency, a community college, or an educational~~
34 ~~provider recognized by a home inspection professional association~~
35 ~~which has been providing home inspection education to home~~
36 ~~inspectors for at least two years.~~

37 ~~(C) Performed at least 50 home inspections for which a fee was~~
38 ~~paid and completed at least 90 classroom hours of relevant home~~
39 ~~inspection education provided by a school approved by the Bureau~~
40 ~~for Private Postsecondary and Vocational Education, a~~

~~governmental agency, a community college, or an educational provider recognized by a home inspection professional association which has been providing home inspection education to home inspectors for at least two years.~~

~~(2) Within the previous five years, has passed a knowledge, skills, and aptitude examination endorsed by a home inspection professional association. The examination shall test competence in home inspection practice, as determined by recognized role definition methodology, and be developed and administered in a manner consistent with the American Educational Research Association's "Standards for Educational and Psychological Testing," the Equal Employment Opportunity Commission's "Uniform Guidelines for Employee Selection Procedures," the Civil Rights Act of 1991, and the Americans with Disabilities Act of 1990.~~

~~(g) A "home inspection professional association" means an organization that meets all of the following requirements:~~

~~(1) Has at least 200 members who are home inspectors in California.~~

~~(2) Has been in existence for at least 10 years.~~

~~(3) Operates pursuant to Section 501(c) of the Internal Revenue Code.~~

~~(4) Certifies that a home inspector has met the criteria set forth in subdivision (f) without requiring membership in the association.~~

~~SEC. 2. Section 7195.5 is added to the Business and Professions Code, to read:~~

~~7195.5. It is the duty of a home inspector who is certified pursuant to this chapter and who is not licensed as a general contractor, structural pest control operator, or architect, or registered as a professional engineer, to conduct a home inspection with the degree of care that a reasonably prudent certified home inspector would exercise.~~

~~SEC. 3.~~

~~SECTION 1. Section 7196.2 is added to the Business and Professions Code, to read:~~

~~7196.2. A person representing himself or herself as a home inspector shall comply with the requirements of subdivision (d) of Section 8550.~~

~~SEC. 4.~~

1 SEC. 2. Section 7197 of the Business and Professions Code is
2 amended to read:

3 7197. It is an unfair business practice for a home inspector, a
4 company that employs the inspector, or a company that is
5 controlled by a company that also has a financial interest in a
6 company employing a home inspector, to do any of the following:

7 (a) To perform or offer to perform, for an additional fee, any
8 repairs to a structure on which the inspector, or the inspector's
9 company, has prepared a home inspection report in the past 12
10 months. A home protection company that is affiliated with or that
11 retains a home inspector does not violate this subdivision if it
12 performs repairs pursuant to a claim made under a home protection
13 contract.

14 (b) Inspect for a fee any property in which the inspector, or the
15 inspector's company, has any financial interest or any interest in
16 the transfer of the property.

17 (c) To offer or deliver any compensation, inducement, or
18 reward to the owner of the inspected property, the broker, or agent,
19 for the referral of any business to the inspector or the inspection
20 company. Nothing in this section shall prevent a home inspector
21 from naming a seller, a real estate broker, or a real estate
22 salesperson as an additional insured in a liability insurance policy
23 maintained by the home inspector.

24 (d) Accept an engagement to make an inspection or to prepare
25 a report in which the employment itself or the fee payable for the
26 inspection is contingent upon the conclusions in the report,
27 preestablished findings, or the close of escrow.

28 ~~(e) On or after July 1, 2004, to hold oneself out or use the title~~
29 ~~“certified home inspector” or some other term that infers that the~~
30 ~~person is certified to perform a home inspection without meeting~~
31 ~~the requirements of subdivision (f) of Section 7195.~~

32 ~~(f)~~

33 (e) To state or advertise a registration or license number unless
34 the license or registration is specified by a statute, regulation, or
35 ordinance.

36 ~~(g)~~

37 (f) To state or advertise that he or she is certified, registered, or
38 licensed by a governmental agency to perform home inspections.

39 ~~(h)~~

(g) To fail to disclose or misrepresent any item required to be disclosed in Section 7197.5.

~~SEC. 5.~~

SEC. 3. Section 7197.5 is added to the Business and Professions Code, to read:

7197.5. As soon as it is commercially feasible and prior to commencing a home inspection, a home inspector shall disclose in writing to the party on whose behalf the home inspection is being done, all of the following:

~~(a) The name, address, and telephone number of the home inspection professional association that certified the home inspector, and the date the home inspector was certified, unless the home inspector is not a certified home inspector.~~

~~(b)~~

(a) A statement disclosing whether the home inspector maintains professional liability insurance.

~~(c)~~

(b) A statement disclosing whether the home inspector maintains general business liability insurance.

~~(d)~~

(c) The approximate number of home inspections the home inspector has performed for a fee:

~~(e) A, or a statement of the home inspector's experience and education, including the number of years of his or her experience as a home inspector, and his or her education related to home inspection, specifically including the number of educational hours completed and the educational facility or facilities he or she attended.~~

~~SEC. 6.~~

SEC. 4. Section 7198.5 is added to the Business and Professions Code, to read:

7198.5. ~~(a) Nothing in this chapter shall prohibit a licensed contractor from performing a home inspection.~~

~~(b) Nothing in this chapter shall be construed to require an agent or broker to refer a certified home inspector rather than a noncertified home inspector when making a referral.~~